IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9240 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATISH PRANLAL JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/04/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda, passed an order on October 17, 1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) detaining Satish Pranlal Jayswal of Sayajiganj, Baroda,

under the provisions of the said Act.

2. The detaining authority found and labelled the petitioner as a 'dangerous person' after taking into consideration three offences registered against him and statements of three anonymous witnesses. The detaining authority exercised powers under Section 9(2) of the PASA Act by maintaining anonymity in respect of these witnesses. The detaining authority considered the possibility of resorting to less drastic remedies, but came to conclusion that detention under PASA Act is the only remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his illegal activities, which are detrimental to public order.

3. The detenu challenges the order of detention on various grounds, the main ground being delay in passing the order.

3.1 Mr. Japee, learned advocate for the petitioner, however, has restricted his arguments to the ground of delay. He has drawn attention of this Court to the fact that the statements of three anonymous witnesses have been recorded on September 11, 12 and 15, 1999. The said statements have been verified on September 17 and 22, 1999 by the detaining authority and the order of detention is passed by the detaining authority on October 17, 1999. He submitted that, therefore, there is a delay of about 25 days in passing the order, even after verification of the statements. He submitted that the delay is not explained and, therefore, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to the rival side contentions, factually, it is not disputed that the statements were verified on 17th and 22nd September, 1999 by the detaining authority and the order was passed on 17th October, 1999, i.e. approximately after 25 days. In the grounds of detention, it is categorically stated that the petitioner is required to be detained immediately in order to immediately prevent him from pursuing his activities. This satisfaction recorded by the detaining authority stands vitiated, as it cannot be said to be genuine. Had it been so, the authority would have acted diligently and not after a lapse of about 25 days. It is not possible to appreciate as to how this satisfaction was arrived at while passing the order when there was a

delay of about 25 days between verification of statement and the passing of the order. There is no intervening incident implicating the detenu with any illegal or anti-social activity. Under the circumstances, the satisfaction about the urgent need for passing the order of detention cannot be considered as genuine. This would vitiate the order of detention. The petition, therefore, deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated October 17, 1999, passed against the detenu is hereby quashed. The detenu-Satish Pranlal Jayswal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt